National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

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Bernard Gottfried, Regional Director, Region 7

Robert E. Allen, Associate General Counsel, Division of Advice

Interlakes Pilots Ass'n Dist. No. 2, Local 1921 ILA, AFL-CIO, (Lakes Pilots Ass'n, Inc.), Case 7-CB-8840

518-2001-5000, 518-2083-3333, 518-4060-8300, 536-2550, 536-2568, 536-2581-0140

The Region submitted this Section 8(b)(1)(A) case for advice on: (1) whether the Union is unlawfully dominated by the Employer and (2) if the Union is unlawfully dominated, whether the Board should refrain from asserting jurisdiction in deference to federal law covering pilotage services on the Great Lakes. (1)

FACTS

In 1959 the St. Lawrence Seaway opened to shipping, making the Great Lakes accessible to large, ocean-going vessels. In 1960 the Great Lakes Pilotage Act, 46 U.S.C. 216, was enacted and provided for the certification of pilotage pools to aid the navigation of the large ships through the narrow channels and rivers of that system. The Coast Guard-certified pool has a monopoly over the provision of pilotage services on vessels passing through its assigned district.

The Great Lakes pilotage regulations, which the U.S. Coast Guard administers, require that the stock or other equity that represents the voting power in the pilotage pools stay exclusively in the hands of registered pilots. (2) The Pilotage Act also empowers the Coast Guard to establish the number of pilots whom it will register and to set the pilotage fees that the pools can charge for their services. In practice, the Coast Guard primarily plays the role of a certifying agency for both the pools and the pilots. The regulations leave to the certified pools how the proceeds from the pilotage services will be distributed among the pool participants or shareholders. Neither the law, nor the regulations, address any issues regarding union representation of the pilots or the pool employees.

Interlakes Pilots Association, Inc. (the Employer), the certified pool for District Two, is a corporation whose shares are held exclusively by registered pilots. It currently employs 15 registered pilots, one applicant pilot (the Charging Party), and six auxiliary personnel. At the time of its creation, the Employer voluntarily recognized Local 1921, International Longshoremen's Association, AFL-CIO (the Union) as the exclusive representative of the pilot employee unit. (3) The current collective-bargaining agreement contains, inter alia, a provision requiring applicant pilots to join the Union and pay "normal monthly dues." (4)

The Employer has the sole authority to discipline, hire or fire pilots and auxiliary employees. Its Examining Board, whose members are drawn from the ranks of registered pilot/shareholders, determines whether pilot misconduct merits discipline. (5) Its Screening Committee, also composed of registered pilots, reviews the performance of applicant pilots and initially decides whether the Employer should recommend to the Coast Guard that an applicant pilot become a registered pilot. (6) Before such a recommendation is made to the Coast Guard, there must be a majority vote of the registered pilot/shareholders to forward the recommendation to the Coast Guard. (7)

At present, there are five members on the Employer's board of directors, who also serve as corporate officers: Greene, president; Waldrup, first vice president; Leinweber, second vice president; Meyers, treasurer; and Singler, secretary. (8) The four Screening Board members, as of December 19, 1990, were: Anderson, (9) Waldrup, Union president Kanaby, and Greene.

In the Spring and the Fall of each year, the Employer holds shareholder meetings at about the time that the Union holds its membership meetings. Each meeting is held separately but in the same city for the convenience of the pilots. One or more Union representatives regularly attend, and participate in, each Board of Directors meeting.

After the end of the 1990 shipping season, the Employer and the Union held their seasonal meetings. At the December 18, 1990 board of directors meeting, the board took up the issue of whether it should recommend Charging Party Hanrahan, an applicant pilot, for registered pilot status.(10) Anderson reported to President Greene that the Screening Committee voted not to recommend Hanrahan for registered status.(11)

On December 19, 1990 the Union held a membership meeting at which the members attending voted for new officers to fill recent vacancies.(12) Nine members attended. Greene chaired the Union meeting and made several procedural motions, including an opening motion to waive the required ten-day meeting notice to the membership. (13) Greene nominated Kanaby for the post of president, board of directors member Singler nominated Schnell for vice president, and Screening Committee Chairman Anderson nominated Coppola for secretary-treasurer. All three were elected to these posts by acclamation. The membership also named Anderson and Schnell to represent the Union at an international union convention, which was to be held two months later. The Union leadership remains the same to the present time.

ACTION

The Region should issue a Section 8(b)(1)(A) complaint, (14) absent settlement, alleging that the Union is unlawfully dominated by the Employer and so is not fit to be a proper representative of the employees.

Initially, we concluded that the Board's handling of the instant case should not be affected by the Great Lakes Pilotage Act or the regulations promulgated by the Coast Guard under that law. Further, that law does not impermissibly conflict with the National Labor Relations Act. It does not address the issue of employee representation. As administered by the Coast Guard, it affords the Employer broad discretion regarding the manner in which it carries on its business, including the terms of employment of individuals who provide pilotage and auxiliary services.(15) While the Coast Guard regulations require that the ownership of the pool remain in the hands of registered pilots, the ownership of shares in the pool, without more, does not exclude shareholders from the coverage of the Act. (16)

It is well settled that a union must be able "to approach negotiations with the single-minded purpose of protecting and advocating the interest of employees."(17) In an earlier case, the Board stated that, if "a union has allegiances which conflict with that purpose, we do not believe that it can be a proper representative of employees."(18) It has also held that:

To establish such a disabling conflict of interests, it is quite clear from the cases that the union or the employer need not have effective domination or control over the other, but merely that there exist the potential of a conflict or a "proximate danger of infection of the bargaining process."(19)

A union having a disabling conflict of interest, which continues to represent the employee unit and is a party to a collective bargaining agreement with a union security clause, violates Section 8(b)(1)(A) and 8(b)(2) of the Act. (20) The employer that continues to recognize and bargain with such a union and maintains in effect a collective-bargaining agreement with a union security clause violates Section 8(a)(1), (2) and (3).(21)

In Teamsters Local 688 Insurance and Welfare Fund,(22), the union's secretary-treasurer also served as the Fund trustee who had ultimate control over unit personnel and labor relations matters. The resulting conflict meant that the union representative who would have assisted the alleged discriminatee in her job complaints was unwilling to take on the offending official because he had "the last word" on such matters. In Medical Foundation of Bellaire,(23) the union or its members occupied almost half of the seats on the employer's board of trustees, and the employer heavily relied on revenue from a union-associated welfare fund. The Board concluded that those facts supported its finding that the union's dual role "legally debars" it from representing the employer's employees.(24)

In the instant case, the "close-knit" relationship among the pilots who run the Employer's operation and the pilots who occupy positions in the Union leadership disables the Union from fulfilling its role of "protecting and advocating the interest of employees."[(25)] The evidence of the Union's conflicts of interest abounds here, where all of the individuals with ownership and voting rights in the Employer's operation exclusively enjoy voting rights and actively participate in Union affairs, and vice versa. Thus, the Employer's president chairs the December 19, 1990 Union meeting, pushing through (with little resistance from the few members present) procedural motions to waive important notice rights. Then, he nominates his fellow Union member for the Union presidency, having earlier empowered the outgoing Union president and the incoming president to decide whether Hanrahan is deserving of a valuable promotion to registered pilot. [(26)] Meanwhile, the Union's secretary-treasurer is responsible for Union funds and business one day, and on the next day he takes a seat on the board of directors, managing Employer assets and affairs. Throughout this period, these Union officials regularly attend, and actively participate in, meetings of the Employer board of directors. For example, as the December 18 minutes of the board report, the Union, having been "consulted" about the denial of Hanrahan's application for registered status, "was agreeable." No wonder, for it was the Union president and his immediate predecessor who made the decision for the Employer.

Throughout the record of this case, the Employer-Union relationship lacks even an "arm's length" between the parties. Rather, the Employer and the Union share the same interests and together bar the door to nonvoting employees, who have no effective voice in the affairs of their Section 9 representative. The Union therefore suffers from a "disabling conflict of interests" and cannot fulfill its legal obligations as bargaining representative. The Region should argue that its continuing representation of the Employer's employee unit and enforcement of its contract with its union security provision violates Section 8(b)(1)(A) and (2) of the Act.[(27)]

Furthermore, based on the significant role that the registered pilot/shareholders, as a class, play in the management of the Employer, there is ample evidence that they "constitute a large homogeneous group clearly having the potential for influencing management policy" and are therefore excluded from the coverage of the Act as managerial employees.[(28)] Because of the small number of eligible persons, the pilot/shareholders rotate through Employer and Union leadership positions and exercise power over the employment status of the nonshareholder employees. In this case, for example, the shareholders, through their Employer/Union officials, joined to reject Hanrahan for promotion to registered status. Accordingly, the Union, having a leadership and membership composed of managerial employees, is unfit to represent the non-shareholder employees for this reason, as well.

Based on the foregoing, the Region should issue complaint, absent settlement.

R.E.A.

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[1] The instant charge also alleges that the Union violated Section 8(b)(1)(A) in its handling of the Charging Party Hanrahan's discharge grievance. The Region has decided to dismiss that portion of the charge, and therefore does not submit those issues for advice.

[2] The regulations do not specify that the pools must assume any particular legal form, such as a partnership, a corporation, or other entity.

[3] While the Union represents the six auxiliary employees, who are "members" of the Union, the Union does not allow them, or the applicant pilot, a right to vote in general Union matters or any right to hold Union office. They are permitted to vote in matters that directly affect them. In addition, while the existing Employer-Union contract covers applicant pilots, there is no provision covering the auxiliary employees.

[4] Article I - Recognition and Union Security, Collective Bargaining Agreement between Lakes Pilots Ass'n, Inc. and Interlakes Pilots, District No. 2, Local 1921, ILA, AFL-CIO.

[5] General Rules No. 13. There is no evidence as to the current membership of the Examining Board.

[6] The highest pilot rating is that of registered pilot. Once a pilot is registered, he or she is eligible to buy stock in the pool, thereby gaining the right to vote in business affairs, which is equal to the other stockholders, and share in the pool profits. The Employer also compensates registered pilots at a higher rate, compared to applicant pilots. In addition, only a registered pilot can attain full voting membership in the Union.

[7] General Rules No. 15(b).

[8] Until December 18, 1990, Singler was the Union's secretary-treasurer. The next day, he was elected to membership on the board of directors.

[9] Until December 18, 1990, Anderson was president of the Union; Kanaby succeeded him.

[10] On the same date, Anderson, who was serving as the chairman of the Screening Committee, resigned from his post as Union president. On the next day, December 19, Kanaby succeeded Anderson as Union president. At this time, Kanaby was also serving as a member of the Screening Committee. Also, on December 18 Union Secretary-Treasurer Singler resigned his post; on the next day, he was elected to the Board of Directors.

[11] The Screening Committee minutes, however, show that the Committee (Anderson, Greene, Kanaby, and Waldrup) met one day after the Directors meeting, on December 19. The evidence does not suggest any explanation for this discrepancy. On December 18, the Employer laid Hanrahan off, and terminated him on February 22, 1991. Issue regarding Hanrahan's individual claim against the Union regarding its handling of his termination grievance were not submitted for advice. The Employer later rescinded the termination, but continued to refuse to recommend him for registered status. See n. 26, below.

[12] As noted above, Anderson and Singler had resigned from their Union offices a day earlier.

[13] On December 10, the Union had mailed to members the notice of the December 19 meeting. The notice failed to state that an election of officers would be held.

[14] A Section 8(a)(1), (2) and (3) complaint, as well as a Section 8(b)(2) allegation, would also be warranted, if the Charging Party elects to file the appropriate charge and amend his instant charge. See discussion below.

[15] See, e.g., Foodway, 234 NLRB 72, 77 (1978) (Internal Revenue Code imposed limitations on employer's discretion in fulfilling bargaining obligations; no excuse for failure to bargain).

[16] Airport Distributors, Inc., 280 NLRB 1144, n. 2 and 1150 (1986) ("stock ownership is not the determinative factor of nonprotected status"; issue is "the degree of participation in management and/or labor policy formulation.").

[17] Child Day Care Center, 252 NLRB 1177 (1980); Teamsters Local 688 Insurance and Welfare Fund, 298 NLRB No. 165, JD slip op. at 4-5 (July 11, 1990).

[18] Oregon Teamsters Security Plan Office, 119 NLRB 207, 211-12 (1957).

[19] Medical Foundation of Bellaire, 193 NLRB 62, 64 (1971). See also St. Louis Labor Health Institute, 230 NLRB 180, 182 (1977) (and cases cited).

[20] Teamsters Local 688 Insurance and Welfare Fund, above.

[21] 298 NLRB No. 165.

[22] Id.

[23] 193 NLRB at 64.

[24] Id.

[25] Child Day Care Center, above.

[26] The impact of this tangled relationship is particularly evident in the minutes of the December 1990 meetings of the board of directors and the screening committee, which show that Anderson submitted to Greene and the Board the Committee's official report concerning Hanrahan on the day before the Committee (Anderson, Greene, Kanaby, and Waldrup) met to consider the issue. In light of the evidence of the dual roles played by Kanaby and Anderson and considering the legal principles discussed here, the Region may wish to reconsider its conclusion regarding the Union's handling of Hanrahan's application for registered status in this case and the nature of the Employer's conduct in Case 7-CA-31833. As noted above, these issues were not submitted for advice.

[27] For the same reasons, if there were a Section 8(a)(1), (2) and (3) charge in this case, the Employer's continuing recognition of the Union and maintaining the existing contract would also be actionable.

[28] See, e.g., Florence Volunteer Fire Dept., Inc., 265 NLRB 955 (1982) and cases cited there.